

THE HIGH COURT OF MEGHALAYA

WP(C)No.133/2014

Shri. Dominic Suting,
S/o (L) H. Khongjoh,
R/o Byrnihat,
Ri Bhoi District, Nongpoh.

:::: Petitioner

-Vs-

1. Khasi Hills Autonomous District Council,
through the Secretary Executive Committee,
KHADC, Shillong.
 2. Executive Committee,
Khasi Hills Autonomous District Council,
Shillong.
 3. Secretary to the Executive Committee,
Khasi Hills Autonomous District Council,
Shillong.
- :::: Respondents

For the Petitioner : Mr. P Nongbri, Adv

For the Respondents : Ms. PS Nongbri

WP(C)No.138/2014

Shri. Sony Tariang,
S/o (L) W. Tariang,
R/o Mawlai Iewrynghep, Shillong
East Khasi Hills District, Meghalaya.

:::: Petitioner

-Vs-

1. Khasi Hills Autonomous District Council,
through the Secretary Executive Committee,
KHADC, Shillong.
2. Executive Committee,
Khasi Hills Autonomous District Council,
Shillong.
3. Secretary to the Executive Committee,
Khasi Hills Autonomous District Council,
Shillong.

4. Executive Member In-Charge Forest,
Khasi Hills Autonomous District Council,
Shillong. :::: Respondents

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the Petitioner : Ms. SK Nongrum, Adv
For the Respondents : Ms. PS Nongbri
Date of hearing : **25.09.2014**
Date of Judgment & Order : **25.09.2014**

JUDGMENT AND ORDER (ORAL)

These two writ petitions involving similar question of fact and law relating with the same subject matter are taken up for joint hearing for disposal by a common judgment and order.

2. Heard Mr. P Nongbri, learned counsel for the petitioner in WP(C)No.133/2014, Ms. SK Nongrum, learned counsel for the petitioner in WP(C)No.138/2014 and Ms. PS Nongbri, learned counsel for the respondents.

3. On 10.09.2009, the Executive Committee of the Khasi Hills Autonomous District Council (for short 'KHADC'), Shillong took a decision for identifying/detecting the illegal trading by non-tribal traders conducting business within the jurisdiction of the Autonomous District Council and also decided to appoint authorized agent to assist the Council in detecting such illegal trading and to penalize them under such terms and conditions as may be determined by the Executive Committee under the relevant Acts and Rules. Pursuant to the said decision dated 10.09.2009, the petitioner of WP(C)No.133/2014, had been appointed as an authorized agent under the order dated 23.09.2009 to check illegal trading by non-tribal commercial

transport operators conducting business without trading licence at Byrnihat areas, Tamulkuchi, Jorabad, Khanapara, Baridua and Killing including industrial area Damsite, Ri Bhoi District for a period of 12 calendar months and the terms and conditions of the appointment of the petitioner as an agent are clearly mentioned in the said appointment order dated 23.09.2009. One of the conditions is that in the event of violation of the conditions, the authorization is liable for cancellation without any opportunity of being heard. The terms of the appointment of the petitioner of WP(C)No.133/2014 as an agent of the KHADC for the said purposes had been extended from time to time and the last extension of the terms of appointment of the writ petitioner was under an agreement dated 23.09.2013 under which the petitioner has to function as an agent up to 31.03.2015.

4. It is also stated in the writ petition i.e. WP(C)No.133/2014 that as the petitioner had been interfered by the Deputy Commissioner, Ri Bhoi District in discharging his duty as an agent of the KHADC, the petitioner had approached this Court by filing writ petition i.e. WP(C) No. 125(SH)2010 against the Deputy Commissioner, Ri Bhoi District, Superintendent of Police, Ri Bhoi District, Officer-in-Charge, Byrnihat Police Outpost, Byrnihat, Ri Bhoi District and others; that writ petition had been finally disposed of by this Court by passing order dated 30.04.2010, with a direction that the respondent-Deputy Commissioner, shall consider and dispose of the representation dated 18.01.2010 filed by the petitioner of WP(C)No.133/2014 by passing a speaking order within a period of 30 days from the date of receipt of the order and also further directed that till the disposal of the representation by the Deputy Commissioner, Ri Bhoi District, the petitioner shall not be disturbed in checking and detection of non-tribal illegally conducting business in the areas mentioned in the agreement between the petitioner and the KHADC.

5. Pursuant to the said order of this Court dated 30.04.2010 passed in WP(C)No.125(SH)2010, the Deputy Commissioner, Ri Bhoi District passed a speaking order dated 28.07.2010 that the writ petitioner of WP(C)No.133/2014 is allowed to check illegal trade by non-tribal traders in the areas mentioned in the agreement. But at the same time, the petitioner is not authorized/allowed to check trucks for trade licenses on National Highway or any other road and any collection of money. It is stated that while the petitioner is functioning as an agent of the KHADC for the said purpose, the Secretary to the Executive Committee, KHADC issued a letter i.e. impugned letter dated 05.03.2014 informing that the Executive Committee having received a complaint that the petitioner collected exorbitant fee from good laden vehicles plying in the State roads towards industrial areas in Byrnihat and others, the said authorization/appointment of the petitioner as an agent to identify/detect illegal trading by non-tribal commercial transport operators without trade licence is cancelled. It is the case of the petitioner in the present writ petition that the petitioner had never been informed or ask to file his explanation/comments to the said complaint alleged to have been filed.

6. The respondents had filed affidavit-in-opposition in WP(C)No.133/2014 wherein, it is stated that the KHADC had received a complaint dated 10.04.2012 filed by the Joint Secretary, All North East Commercial Trucks Owners & Operators Association against the petitioner alleging that the petitioner had been engaging private parties to extort money. The said complaint had been considered by the Executive Committee, KHADC in its meeting held on 31.03.2014 and passed a resolution that with a view to remove such arbitrariness and discrimination, all settlement of leases or authorizations shall be revoked and discontinued and the collection of tax for the time being shall be dealt departmentally. It is

clear from the affidavit-in-opposition as well as from the writ petition that no show cause notice was issued to the petitioner before passing the said impugned letter/order for cancelling the authorization and also a copy of the said complaint was not furnished to the petitioner.

7. In the Writ Petition No.138/2014, it is stated that the KHADC published Notice Inviting Tender (for short 'NIT') for the contract work of collecting fee from the illegal commercial transport within Byrnihat, Jorabad, Khanapara, Raid Marwet in Ri Bhoi District under the KHADC vide tender notice being No.DC. RBF/VIII/540/2009-13/40 dated 09.12.2013. It is stated that the terms and conditions of the contract work mentioned in the said tender are that the contract work for collection of fee from the illegal commercial transport under the KHADC would be for a period of three years. The last date for submission of tender was on 23.12.2013 till 1:00 PM and the same was to be opened at 3:00 PM on the same date and the minimum lease amount was fixed at Rs.2,50,000/- per annum. In response to the said NIT dated 09.12.2013, the petitioner of WP(C)No.138/2014 had submitted his bid and after due consideration of all the bids by the authorities of the KHADC, issued the work order dated 05.03.2014 for collection of fee from illegal commercial transport within Byrnihat, Jorabad, Khanapara, Raid Marwet in Ri Bhoi District under the KHADC. It is also admitted case of the parties that as per the terms and conditions of the said work order, the petitioner of WP(C)No.138/2014 had deposited the annual lease amount of Rs.2,65,000/- only on 31.03.2014. Ms. PS Nongbri, learned counsel for the respondents also admitted that the petitioner of WP(C)No.138/2014 had deposited the said amount with the KHADC. Ms. PS Nongbri, learned counsel for the respondents contended that after thorough verification and inquiry, the authorities of the KHADC later on learnt that the said NIT i.e. 09.12.2013 was not widely circulated and for more transparency in awarding

the contract work, the KHADC had issued the order/letter dated 31.03.2014 to the petitioner of WP(C)No.138/2014 that the Council i.e. KHADC had revoked the work order dated 05.03.2014 issued in favour of the writ petitioner of WP(C)No.138/2014 and also the agreement executed between the petitioner of WP(C)No.138/2014 and the KHADC. Hence, this writ petition i.e. WP(C)No.138/2014 for assailing the said impugned order dated 31.03.2014.

8. After hearing the submissions of the learned counsel appearing for the parties as well as on perusal of the writ petitions and counter affidavits, it is clear that there is no transparency or fair play in inviting tender for the said work and also at the same time, the principle of natural justice was also not followed in issuing the impugned order for revocation of the work order and also the order for cancelling the authorization/agreement in favour of the petitioner of WP(C)No.138/2014. In these peculiar circumstances, this Court is of the considered view that there should be transparency and fair procedures in issuing the contract work of collection of fee and checking of illegal trading by non-tribal commercial transport operators conducting business without trade licence at Byrnihat areas, Tamulkuchi, Jorabad, Khanapara, Baridua and Killing including industrial area Damsite, Ri Bhoi District.

9. Accordingly, these writ petitions are disposed of by directing the respondents No.1-3 to float tender for the said contract work and the NIT (Notice Inviting Tender) should be widely circulated and also the terms of the tender should also be clearly mentioned in the NIT. Over and above, period for submitting the tender should be for a reasonable period i.e. at least 20 days from the date of floating the tender. The tenders submitted by the contractors should be finalized by the expert committee or by the Committee

of the KHADC by following the procedures and conditions for finalization of the tender as prescribed under the relevant Acts and Rules. It is also made clear that finalization of the tender should be within a reasonable period or should be completed as expeditiously as possible within three months from the date of receipt of a certified copy of this common judgment and order. In the interregnum, the collection of fee and others shall be done departmentally. The respondents are further directed to refund the said amount of Rs.2,65,000/- only deposited by the petitioner of WP(C)No.138/2014 with interest i.e. interest for fixed deposit with Meghalaya Rural Bank till the said amount is returned to the petitioner.

10. With the above observations and directions, these writ petitions are disposed of.

JUDGE

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